

provisions of NAHASDA is not a pattern or practice of activities constituting willful noncompliance, and is a result of the limited capability or capacity of the recipient, HUD may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability or capacity of the recipient to administer assistance under NAHASDA in compliance with the requirements under NAHASDA.

(d) In lieu of, or in addition to, any action described in this section, if HUD has reason to believe that the recipient has failed to comply substantially with any provisions of NAHASDA, HUD may refer the matter to the Attorney General of the United States, with a recommendation that appropriate civil action be instituted.

**§ 1000.540 What hearing procedures will be used under NAHASDA?**

The hearing procedures in 24 CFR part 26 shall be used.

**§ 1000.542 When may HUD require replacement of a recipient?**

(a) In accordance with section 402 of NAHASDA, as a condition of HUD making a grant on behalf of an Indian tribe, the Indian tribe shall agree that, notwithstanding any other provisions of law, HUD may, only in the circumstances discussed below, require that a replacement TDHE serve as the recipient for the Indian tribe.

(b) HUD may require a replacement TDHE for an Indian tribe only upon a determination by HUD on the record after opportunity for hearing that the recipient for the Indian tribe has engaged in a pattern or practice of activities that constitute substantial or willful noncompliance with the requirements of NAHASDA.

**§ 1000.544 What audits are required?**

The recipient must comply with the requirements of the Single Audit Act and OMB Circular A-133 which require annual audits of recipients that expend Federal funds equal to or in excess of an amount specified by the U.S. Office of Management and Budget, which is currently set at \$300,000.

**§ 1000.546 Are audit costs eligible program or administrative expenses?**

Yes, audit costs are an eligible program or administrative expense. If the Indian tribe is the recipient then program funds can be used to pay a prorated share of the tribal audit or financial review cost that is attributable to NAHASDA funded activities. For a recipient not covered by the Single Audit Act, but which chooses to obtain a periodic financial review, the cost of such a review would be an eligible program expense.

**§ 1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?**

Yes. A copy of the latest recipient audit under the Single Audit Act relating to NAHASDA activities must be submitted with the Annual Performance Report.

**§ 1000.550 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?**

Yes. The Indian tribe as the grant beneficiary must receive a copy of the audit report so that it can fully carry out its oversight responsibilities with NAHASDA.

**§ 1000.552 How long must the recipient maintain program records?**

(a) This section applies to all financial and programmatic records, supporting documents, and statistical records of the recipient which are required to be maintained by the statute, regulation, or grant agreement.

(b) Except as otherwise provided herein, records must be retained for three years from the date the recipient submits to HUD the annual performance report that covers the last expenditure of grant funds under a particular grant.

(c) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.